

APR 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MOHAMMED SHAMIM,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-70895, 07-72351

Agency No. A037-046-017

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted March 11, 2009  
San Francisco, California

Before: KOZINSKI, Chief Judge, NOONAN, Circuit Judge and  
EDMUNDS,<sup>\*\*</sup> District Judge.

The BIA erred when it determined that petitioner's conviction under Cal.  
Penal Code § 69 for resisting an executive officer is a "crime of violence" under 18  
U.S.C. § 16 and thus qualifies as an "aggravated felony," under 8 U.S.C. §

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Nancy G. Edmunds, United States District Judge for  
the Eastern District of Michigan, sitting by designation.

1101(a)(43)(F). The conduct proscribed by Cal. Penal Code § 69 is broader than the “crimes of violence” defined in 18 U.S.C. § 16. *See Jordison v. Gonzales*, 501 F.3d 1134, 1135 (9th Cir. 2007).

Petitioner also challenges whether his convictions under Cal. Penal Code § 69 for resisting an executive officer, under Cal. Penal Code § 594 for vandalism, and under Cal. Penal Code § 245(a)(1) for assault with a deadly weapon, not a firearm constitute “crimes involving moral turpitude.” We remand to the BIA for reconsideration, in light of *Marmolejo-Campos v. Holder*, \_\_\_ F.3d \_\_\_, 2009 WL 530950 (9th Cir. March 4, 2009), and *In re Silva-Trevino*, 24 I. & N. Dec. 687 (A.G. 2008), whether any of petitioner’s convictions constitutes a crime involving moral turpitude.

PETITION GRANTED.